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IN THE

Supreme Court of the United States

OCTOBER TERM, 1925.

No. 15.

EDGAR S. APPLEBY and JOHN S. APPLEBY,
individually and as executors, etc.,
Plaintiffs-in-Error,
against

THE CITY OF NEW YORK, *et al.*,
Defendants-in-Error.

No. 16.

EDGAR S. APPLEBY and JOHN S. APPLEBY,
Plaintiffs-in-Error,
against

JOHN H. DELANEY, as Commissioner of Decks of
The City of New York,
Defendants-in-Error.

In Error to the Supreme Court of the State of New York.

REPLY BRIEF FOR PLAINTIFFS-IN-ERROR ON REARGUMENT.

18-13
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We desire to present the following reply to some of the
statements and arguments advanced for the defendants-in-
error on this reargument.

No. 15, Appleby v. City of New York.

The "real consideration" (*Brief for Defendants-in-Error on Reargument, No. 15, p. 6*) for the plaintiffs' grants was not simply the filling in between the streets, which they were free to do at their pleasure (See *Mayor v. Law*, 125 N. Y. 380, 391), or the covenants to make and maintain, on the City's request, the streets and avenues and the bulkheads within the streets, and pay taxes, but also a substantial—indeed for the time—a large cash consideration paid to the City (*Record No. 15, pp. 367, 368*). The plaintiffs would have filled in and made the land and bulkheads on their premises between the streets if the City had not prevented this, asserting its intention to take the premises by condemnation. The first intimation of a refusal to recognize the plaintiffs' title was the discontinuance of the condemnation proceedings and thereupon this suit was brought.

The waters over the plaintiffs' premises beyond the bulkhead line are not "part of the navigable waters of the river" (*Brief for Defendants-in-Error on Reargument, p. 9*) in the sense that they are free from the obligation of the plaintiffs' grants, or in the sense that they are made such by any action of the Federal Government. So far as Federal action is concerned, the premises in question may be covered by piers, as indeed the City has covered the adjoining property, within the lines of the streets, by piers. The City, in trying to give these premises the status of being a "part of the navigable waters of the river" is simply endeavoring to repudiate its own grants by which the *ripa* was extended to Thirteenth Avenue, an extension which, in the absence of resumption of title upon just compensa-

tion, was final with respect to the City, and with which so far as the building of piers is concerned the Federal Government has not interfered. It will be noted that the City admits (*id.*, p. 9) that it "prohibits the building of any structures on the plaintiffs' property beyond the bulkhead line".

First: The City contends, in its first point (*id.*, p. 9), that "the acts of the State do not amount either to a taking of property or the impairment of the obligation of a contract".

What the City has actually done admits of no question. The City, acting under the State legislation subsequent to the grants, has prohibited the plaintiffs from filling in, and from building any structures upon their premises between the streets. Is this not an impairment of plaintiffs' rights under their grants? The City has built piers within the lines of the streets, shedded them and leased these piers with exclusive rights. These piers are continuations of the streets and the plaintiffs under their deeds are entitled to access to them as public streets (*Record*, No. 15, Plaintiffs' Ex. 4, fol. 1114; Ex. 5, fol. 1147). The plaintiffs are also entitled to "all manner of wharfage, cranage, advantages or emoluments" accruing in front of the premises conveyed to them between the streets (*id.*, fols. 1121, 1122, 1154). These rights have been overridden by the City acting under State legislation subsequent to the grants. The plaintiffs being prevented from building any structures whatever, the premises belonging to the plaintiffs are used as basins or slips for the exclusive advantage of the City and its lessees. The City prohibits the plaintiffs from using their premises in any manner so that this exclusive advantage of

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the City and its lessees can be maintained. The City dredges out the spaces between its piers, actually removing the land under water which belongs to the plaintiffs, in order to facilitate the use of the granted premises by the City and its lessees. The City, in its former argument, denied that the plaintiffs could make any "profitable use" of their property. The plaintiffs thus are allowed to enjoy nothing and are compelled to pay taxes. Is not this an impairment of the obligations of the grants?

The brief for the City (*id.*, p. 9) says that the courts of New York have held that the title of the City and its grantees "to the land under the waters of the Hudson River is not absolute and unqualified, but is subject to such regulations as the public authorities may impose respecting the use of the waterfront."

Such a statement, as applied to grants of the sort here involved made by the City along the shore and within the defined *ripa* under the Laws of New York of 1837, Chapter 182, (*Brief for Plaintiffs-in-Error on former argument*, pp. 13-15) is without foundation.

The decision of the Court of Appeals in the case at bar is itself an answer to such a contention, so far as the plaintiffs' premises inshore of the Federal bulkhead line is concerned. If the State and the City under its authority had this broad power of regulation, why could they not establish the bulkhead line further inshore? But the Court of Appeals held in No. 15 that the plaintiffs' grants could not be overridden in this way. Instead of holding that the title to land under water on the shore of the Hudson River, no matter how granted, was "subject to such regulations as the public authorities may impose" the Court of Appeals has held in this case that inshore of the bulkhead line, which

was also land under water, the State and the City could *not* "convey lands under water to private owners and retake the same by the exercise of the police power without making compensation therefor." The Court of Appeals said that the grant to the plaintiffs was "a property right which can be resumed by the City only on payment of compensation" (*Record*, No. 15, pp. 568, 569).

In this statement of the law, the Court of Appeals followed a line of decisions, cited in our principal brief, holding that grants of the sort here involved convey the fee simple absolute subject only to the exercise of Federal power. And, we believe it to be clear, that so far as the State and City are concerned there is no difference between the plaintiffs' title to the premises inshore of the Federal bulkhead line and that to their premises outshore of that line and lying within their boundry, being the Thirteenth Avenue as defined. The difference is not in the grants, or in the title conveyed, but is ascribed by the State court, erroneously as we insist, to the Federal action. The State court attributed to the Federal action an effect as to the use of the plaintiffs' property which cannot be justified, for that action still permitted the building of piers, wharves and other structures, without solid filling, and all such improvements the State and City seek to prevent.

It is one thing to contend that the action of the Federal Government in fixing a bulkhead line and a pierhead line has in some way endowed the State with power to repudiate and impair its grants, although the improvements sought to be made by the grantees are consistent with the Federal action, and it is quite another thing to contend that independent of the Federal action the plaintiffs' rights, whether inshore or outshore of the bulkhead line, were subject to

State regulation despite the grants. Apparently conscious of the weakness of the first contention, the City advances the second which rests, we submit, on a misapplication of the State decision.

The application sought to be made by the City (*Brief for Defendants-in-Error on Reargument*, pp. 9-16) of general expressions in opinions of the State court is shown to be unwarranted by the decisions from which these expressions are taken. Not only do these decisions fail to justify any right of regulation to impair grants such as those here involved, but they show that the City cannot interfere even with *pier* rights, granted within the limits of streets, without making compensation. *Knickerbocker Ice Co. v. 42nd St. R. R. Co.*, 176 N. Y. 408 and *American Ice Co. v. City of New York*, 217 N. Y. 402. In these cases the question related to a pier at the foot of Forty-third Street and the Hudson River. The pier was within the lines of the street. It is quite clear that the right in this pier pertained principally, if not entirely, to what not only lay outshore of the bulkhead line, but also outshore of the proposed Thirteenth Avenue (the boundary of the grants to the plaintiffs in this case). It is manifest from what is stated in the *American Ice Company* case (217 N. Y. at p. 420), where in quoting from an earlier case involving the same property (193 N. Y. 519) the court said that the pier owners had no right to compensation for damages to the *old structure* which might at any time have been rendered worthless "by the filling in of the land as far westerly as Thirteenth Avenue". But the Court pointed out (217 N. Y., p. 420) that the City was proposing to build a new pier extending 700 feet westerly into the Hudson River on a line 20 feet *south* of the southerly line of Forty-third Street. This, it was said, would

destroy the right of the Ice Company to build and maintain a pier at the foot of Forty-third Street. The Court held that conceding that the Ice Company had at the time no pier at the foot of Forty-third Street it "*still retains the right to maintain a pier at that point and that right cannot be destroyed without compensation*". That right existed under a grant by the City in 1852 of a right to maintain a pier. While it was held that the grant of this right to maintain a pier at the foot of the street was not a grant of the fee but of an incorporeal hereditament attached to the fee, still the plaintiff had the right to follow the "*lawful extension of Forty-third Street for the purpose of maintaining a pier*". This was the original decision in the *Knickerbocker Ice Company* case (176 N. Y., p. 419) and this construction of the grant of 1852 the Court said was consistent with its decision in *Langdon v. Mayor*, 93 N. Y. 129, to the effect that "a grant of the right of wharfage is property, the possession of which can only be resumed by the State or municipality, by due process of law and upon proper compensation".

The case of *Matter of Mayor*, 193 N. Y. 503, was a condemnation proceeding brought by the City to acquire title to waterfront property on the Hudson River between Forty-second and Forty-third Streets, and the question considered was as to the right of the American Ice Company, as the successor of the Knickerbocker Ice Company, to compensation for its pier right at the foot of Forty-third Street. The court held that the company was clearly entitled to compensation for its *pier* right, but that the condemnation proceeding then at bar related only to the land under water between Forty-third and Forty-second Streets and that none of the rights of the Ice Company were

appurtenant to the premises sought to be condemned. That it had no legal right of access over the premises between the streets (*id.*, p. 519). Upon the next trial it was stipulated that compensation might be awarded for the plaintiffs' rights in that action, and thereupon the right to that compensation was sustained. (*American Ice Co. v. City*, 217 N. Y. 420, 421.)

An examination of these decisions shows that there is nothing therein inconsistent with the line of decisions upholding the rights of grantees under grants such as those in the instant case, which are held to be grants in fee simple and the enjoyment of the rights under which cannot be destroyed without compensation by the exercise of the regulating power of the State. (*Duryea v. Mayor*, 62 N. Y. 592, 596, 597; *Langdon v. Mayor*, 93 N. Y. 129, 145, 161; *Duryea v. Mayor*, 96 N. Y. 477, 488; *Williams v. Mayor*, 105 N. Y. 419, 433; *Mayor v. Law*, 125 N. Y. 380, 391.)

The case of *People v. New York and Staten Island Ferry Co.*, 68 N. Y. 71, related to a grant under the Act of 1813 and presented a different question. As we have pointed out in our principal brief, it is not inconsistent with the *Duryea* case (62 N. Y. 592) decided but a short time before by the same judges.

Until its argument was overridden by the Court of Appeals in the case at bar, the City attempted to apply it as well to the portion of the premises of the plaintiffs inshore of the bulkhead line as to that portion outshore of that line. And, of course, that would be necessary to be consistent. But the City's counsel now speaks of the plaintiffs' title as complete within the bulkhead line (*Brief for Defendants-in-Error on Reargument*, p. 16) and that concession destroys the basis of his argument. The State

defined the *ripa* and authorized the City to make proprietary grants. The City under this authority granted all the title that it had. The State established the *ripa* at Thirteenth Avenue and if it wishes to change that and thus override its grants, it can do so only on payment of just compensation. Whether or not a subsequent bulkhead line is run across the property in no way affects the plaintiffs' title and rights under their deeds as against the State and the City so long as nothing is done to conflict with Federal rules.

We are amazed at the following statement of the City's counsel on page 20 of its brief on reargument: "Outshore of the bulkhead line, however, we are in navigable waters. Here, every private right is subordinate to the right of the public. All ownership is subject to public regulation".

Is it counsel's contention that the State and the City can grant pier rights and then destroy them by regulation? The City's position is opposed to numerous decisions and constant practice. As we have just seen, in the *Ice Company* cases, a pier right was sustained and compensation awarded. It is settled law that the City under the authority conferred by the State may make reasonable grants along the water front, and extending outshore of the bulkhead line, for beneficial enjoyment and that such grants having been made for a valuable consideration, and being consistent with the Federal rules, there is no authority in the State and the City to override the private right and to make the ownership subject to public regulation which destroys the benefit of the grant. The premises involved in the *Ice Company* cases between Forty-second and Forty-third Streets are shown in defendant's Exhibit D (*Record No. 15*, p. 531). The possibilities of a pier at the foot of

Forty-third Street can readily be seen and the nature of the pier right for which compensation was awarded cannot fail to be appreciated.

In *Matter of Old Pier No. 49*, 227 N. Y. 119, there was an award under a condemnation proceeding to the private owners of a pier which ran outshore of the bulkhead line. The question there turned on whether the right to *shed* the pier had been obtained under a revocable or an irrevocable license, and the evidence showed different values according as the pier was regarded as a shedded or an unshedded pier. The court held it should be valued as a pier which was shedded under a revocable license, but there was no question as to the right to be compensated for the *pier* as an unshedded one. The right to maintain the pier was not overridden because it ran outshore of the bulkhead line; it was not subject to a public regulation which could destroy it. It was not a private right which was subordinate to the rights of the public. It was a private right which had been created under a competent grant and paid for and which could not be resumed without compensation. Hence, the condemnation proceeding. In the *Ice Company* case (193 N. Y. 519) it was conceded for the purpose of the discussion that the Ice Company had no pier at the time at the foot of Forty-third Street, but was entitled to maintain one. Whether it is a right to have a pier or a right to maintain a pier, the result is the same. The fact that the pier runs outshore of the bulkhead line, but within the pierhead line, does not permit it to be destroyed, as it is a property right under a valid grant.

In *Matter of Mayor*, 135 N. Y. 253, the question related to condemnation proceedings instituted by the City to acquire title to lands between Thirty-fourth and Thirty-fifth Streets, Thirty-fifth and Thirty-sixth Streets and Forty-

first and Forty-second Streets on the Hudson River. It was contended that the water front properties held by the New York Central & Hudson River Railroad and the Consolidated Gas Company were already devoted to a public use and hence not subject to condemnation. The proceeding to condemn was sustained, but there was no contention that the premises which had been conveyed and which ran outshore of the bulkhead line could be taken without compensation. The City has repeatedly instituted condemnation proceedings to take premises along the water front which had been conveyed and which ran outshore of the bulkhead line. To assert a right of resumption of title, or to override grants, as stated in the City's brief, upon the ground that every private right outshore of the bulkhead line is subordinate to the rights of the public and subject to public regulations so as to destroy the obligations of the grants is to ignore rights and titles representing the investment of millions of dollars in water front property in the City of New York and the consistent recognition of titles which has taken place in a great number of actual condemnation proceedings. See, for example, cases where pier rights were involved.

Matter of Mayor, Pier 39 East River, 168 N. Y.
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Matter of City of New York, Old Piers Nos. 19
and 20, 117 App. Div. 553

Matter of City of New York, Old Piers Nos. 16
and 17, 138 App. Div. 186.

In *Matter of City of New York*, 143 App. Div. 515, the condemnation proceeding was to acquire for ferry purposes the land between the streets out to the pierhead line established by the Secretary of War.

The inconsistency of the City's argument is shown in the statement (Brief on Reargument, p. 23) that if it built the proposed pier over plaintiffs' premises between West 40th and West 41st Streets, shown on the map opposite page 62 in the record in No. 16, it would be obliged to condemn and pay. If this is so, what becomes of the public right to which the plaintiffs' title and rights are said to be subordinate? The City's argument seems to be that the plaintiffs' premises belong to the plaintiffs if the City builds a pier over them but do not belong to the plaintiffs so that they can build their own structure! The City is to pay if it builds the pier but if it prefers to keep the plaintiffs' premises open and use them for the benefit of the adjoining piers and to prohibit the plaintiffs from making any profitable use of their property, the City need pay nothing. This rather remarkable contention seems to ignore the obvious point that if the plaintiffs' title and rights are of such a character that in the case of the supposed pier the City would have to condemn and pay, then the conveyances to the plaintiffs are plainly such that the obligations of the grants cannot be impaired under the subsequent State legislation which the City invokes in preventing the plaintiffs from making improvements and enjoying the profitable use of their property and in treating their premises as nothing but basins or slips appurtenant to the City's piers and as being for the exclusive use of the City and its lessees.

Second: The City, in its second point, (Brief on Reargument, p. 23) contends that "questions concerning the rights of grantees of land under navigable waters are purely local."

Undoubtedly, it is well established that "the right of the United States in the navigable waters within the several States is limited to the control thereof for purposes of navigation"; that "the character of the State's ownership in the land and in the waters is the full proprietary right"; and that the State as absolute owner may in conveying tide lands grant or withhold rights in the adjoining water area. Whether its conveyances of land abutting upon navigable water does confer upon the grantee a right or interest in those waters or in the land under the same is a matter of local law. (*Port of Seattle v. Oregon & Washington R. R. Co.*, 255 U. S. 55, 63; *Shively v. Bowlby*, 152 U. S. 1, 40; *United States v. Holt State Bank*, decided by this court February 1, 1926).

But when the State, or the City under its authority, definitely conveys land under water along the shore, to which it has full title, for beneficial enjoyment and for a valuable consideration, in aid of the development of the waterfront the State has no right, any more than in other cases, to repudiate the conveyance and impair its obligations. Grants of waterfront property are not excepted from the Constitutional inhibitions against the impairment of the obligations of contract and the deprivation of property without due process of law. The reference to local law as to riparian rights is always subject to the condition that the rules of the State "do not impair the efficacy of the grants or the use and enjoyment of the property by the grantee." *Packer v. Bird*, 137 U. S. 661, 669.

Where the State has defined the *ripa*, and conveyances under its authority have been made for value of definitely described premises within the area thus laid out, where these deeds convey title in fee simple as in this case, they are just as much within the protection of the Federal Con-

stitution as any other grants. The validity and effect of subsequent State legislation overriding titles and rights thus conveyed are not left to State Courts, and certainly their decisions sustaining such State legislation can gather no force by ascribing the result to Federal action when in truth there has been no Federal action justifying interference with the private right to fill in solidly to the bulkhead line and to build open piled structures to the boundary of the grants within the pierhead line.

Third: The City contends that its piers and sheds are lawfully maintained. (Brief on Reargument, p. 28).

They are within the lines of the streets but they are not open to the public as contemplated by the grants. The plaintiffs are denied access as these piers are shedded and fenced in and maintained for the exclusive use of the City's lessees.

The point is that the City has not only built piers within the street lines but, claiming under the State legislation subsequent to the grants, the City prohibits the plaintiffs from using the intervening spaces between the streets, the premises conveyed by the plaintiffs' deeds, and appropriates these spaces to the use of the adjoining piers under the City's leases. There is no question about this. Thus the amended answer of the City in this case (*Record* No. 15, p. 74, fols. 220, 221) expressly admits the allegations in paragraphs CXXV, CXXVI, CXXVII and CXXVIII of the amended complaint. These allegations (*id.*, pp. 57, 58, fols. 168-173) set forth the leasing of the southerly side of the 41st Street pier and the use of the half slip or basin adjoining. And paragraph CXXVIII (*id.*, p. 58, fol. 173)

alleges, and it stands admitted (fol. 221) that the City "has frequently from time to time since the construction of said pier, made other leases and permits for the use of plaintiffs' premises as and for a half slip or basin adjacent to said pier". What is admitted as to this pier is also true with respect to the other piers. In aid of this use of the plaintiffs' premises, the City has excavated and dredged them (see Finding of Fact No. (29); *id.*, p. 181, fol. 542). Having dredged the plaintiffs' premises to make this possible, vessels occupy them as basins appurtenant to the piers, from which the City is thus able to derive large rentals and profits (*id.*, p. 181, fol. 543). The property which the plaintiffs own and are prevented from using is appropriated to the exclusive use of others. The fenced-in pier is shown in the photograph, Plaintiffs' Exhibit No. 88 (*id.*, p. 505). The use that is made of plaintiffs' premises after they have been dredged, for the mooring of vessels alongside of the leased piers is shown in the photograph, Plaintiffs' Exhibit 86 (*id.*, p. 501).

Fourth: The City seeks to justify the dredging of the plaintiffs' premises by saying that it was to facilitate navigation (Brief on Reargument, p. 30).

But this is not the case of the owner of the bed of navigable waters subject to public improvements in the interest of navigation. This is the case of conveyances in fee simple absolute of premises along the shore to be gained out of the river and used as waterfront property. It could be covered with structures. So far as Federal action was concerned it could still be covered with structures, solid to a given line and beyond that with open piled structures such

as wharves or piers. The plaintiffs were granted wharfage and all advantages accruing on the exterior line of the City and on the westerly side of the premises conveyed.

Originally, the shore line of the Hudson River at this point ran in nearly as far as Eleventh Avenue (Plaintiffs' Exhibit 1, *id.*, p. 365). It is found as a fact by the State court that along the bulkhead line, which is 150 feet west of Twelfth Avenue, the plaintiffs' premises "have been dredged from a depth of 3 feet to a depth of 20 feet below mean low water (*id.*, p. 194, fol. 582). Thus the "navigation" has been made possible by removing the soil which was conveyed to the plaintiffs.

These mud flats were conveyed in fee simple absolute for a valuable consideration and for beneficial use, subject only to Federal action, the grantees taking valid title with rights of improvement and enjoyment of which they could be divested by the State only by the exercise of the power of eminent domain. Surely, the State cannot enlarge its authority and justify appropriation to the use of others without making compensation by dredging out the premises for such use and then claiming them as navigable waters.

Fifth: Finally, the City contends that the decision of the Court of Appeals does not carry with it approval of the conclusions of law of the Appellate Division (Brief on Reargument, p. 30).

We refer to what we have said on this point in our principal brief on this reargument (pp. 18 *et seq.*). This is not a case of conclusions that were not pertinent or were not necessary. The questions before the Court of Appeals were only questions of law. The Court of Appeals did not

disagree with or disapprove the conclusions of law of the Appellate Division. On the contrary the Court of Appeals not only impliedly by its affirmance but expressly in its opinion approved these conclusions.

The nature of the plaintiffs' title and the extent of their rights both inshore and outshore of the Federal bulkhead line were in issue, had been litigated and determined. As to the portion of the premises inshore of the bulkhead line, the Court of Appeals manifestly agreed with the conclusions of the Appellate Division, for the Court of Appeals said that the title which the City had conveyed could not be divested without compensation (*Record* No. 15, pp. 568, 569). In its brief on the former argument (p. 9) the City conceded that the State Court had sustained the plaintiffs' rights inshore of the bulkhead line. Here is no variance from the conclusions of the Appellate Division.

And as to the portion of the premises outshore of the bulkhead line, the Court of Appeals (*id.*, pp. 567, 568) apparently adopted the view of the Appellate Division that in some way the Federal action in fixing the bulkhead line had deprived the plaintiffs of the right to improve their property even by structures which did not conflict with that Federal action. Holding that view, the Court of Appeals affirmed the judgment.

We are unable to see anything in the City's contentions as to the conclusions of law of the Appellate Division, unless the City is trying to get away from the explicit rulings as to the inviolability of the plaintiffs' title and rights inshore of the Federal bulkhead line, although these rulings were clearly affirmed by the Court of Appeals as otherwise there would be no meaning in the reiterated statements in the opinion of the Court of Appeals that the City could not

retake the property by the exercise of the police power without compensation or carry out its plan without reacquiring the title.

No. 16. Appleby v. Delaney.

We see no reason to add to what we have said as to the Federal question in our principal brief.

The plaintiffs' contention as to the construction of the grants, which the City's counsel seeks to dismiss so summarily (Brief on Reargument, No. 16, p. 7) is the contention explicitly upheld by the Court of Appeals in the first *Duryea* case (62 N. Y., pp. 596, 597) and the contrary of which was said to be "quite inconceivable" in the second *Duryea* case (96 N. Y., p. 496). The Court of Appeals in those cases was unable to adopt a construction that the purchase was burdened with a condition "that it should be enjoyed only by the permission of the grantor" (*id.*).

The City now raises the additional point that the plaintiffs' application with respect to their improvement was made to the Commissioner of Docks and not to the Common Council, as said to be required by the grants and the ordinance. But we might reply not only that no permission is required under the grants in the sense for which the City contends, but that the Common Council of the ordinance and the grants no longer exists. The only permission required under the Greater New York Charter is that of the Department of Docks. And the only permission required that is consistent with the grants is the ordinary permit required for all building operations or excavations within the City's limit in order to insure safeguards against accidents and the usual police supervision.

When application was made to the Department of Docks representing the City in matters relating to the waterfront, the City refused solely on the ground that it had amended its plan under legislation subsequent to the plaintiffs' grants by moving the bulkhead line further inshore. The plaintiffs protested against this as an invasion of its constitutional rights. It was not asserted in this proceeding in any of the State Courts that the plaintiffs had applied to the wrong body or department. Such a contention, it is believed, would have had scant attention by the State Courts familiar with the City's charter.

On the other hand, the contention that the grants, which were made by the Common Council directly—the body then competent to give permission if it were required—and which did not refer to the prior ordinance or incorporate it—were subject to the arbitrary authority of the City to deny at its pleasure all beneficial enjoyment under the grants, is, we submit, wholly without merit. The outstanding fact is that the State Court by its decision has enabled the City to carry out the plan it pleaded in the proceeding—a plan resting on State legislation subsequent to and impairing the obligation of the grants.

New York, February 8th, 1926.

Respectfully submitted,

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